

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF PUBLIC UTILITIES

Investigation by the Department
pursuant to 220 C.M.R. 2.00 et seq.,
commencing a Rulemaking establishing
the procedures to be followed in
electric industry restructuring by
electric companies subject to c. 164

D.P.U. 96-100

COMMENTS OF THE TOWN OF LEXINGTON

Pursuant to the Order of the Department of Public Utilities

("Department") dated May 1, 1996, The Town of Lexington

("Lexington") submits the following comments, and requests an opportunity to provide oral testimony at the hearings, in response to the Department's Proposed Rules Governing the Restructuring of the Electric Industry in the Commonwealth of Massachusetts, 220 CMR 11.00 et seq. ("Proposed Rules").

1. Proposed Rules on Load Aggregation and Municipal Choice

As indicated in its comments filed on April 12, 1996, Lexington's primary objective in this docket is the promulgation by the Department of rules providing substantive guidance regarding tariff provisions for the aggregation of customer loads in general and, in particular, for municipal load aggregation pursuant to Chapter 164 by newly formed municipal gas and light departments. At this time, it remains Lexington's view that the Department's

Proposed Rules should require each utility to file tariffs which facilitate the implementation of load aggregation, particularly aggregation by "municipal choice". Without load aggregation, the Department's Second Principle for a Restructured Electric Industry may be impractical, if not impossible, to accomplish for the small and normally sized retail customers which Lexington believes it has a special responsibility to assist.

However, due to the accelerated pace of the Department's rulemaking efforts, the Department has not yet been able to provide in the Proposed Rules substantive guidance on load aggregation and municipal choice. Lexington has drafted additions to the Proposed Rules which address load aggregation and municipal choice for the Department's consideration and review. Those additions are attached hereto as Attachment A and are offered in a spirit of assistance and support for the Department's formidable task in this restructuring effort. The rationale for the proposed additions was set forth in the April 12, 1996 comments of Lexington.

2. Comments on Department's Specific Load Aggregation Questions

On page 35 of the Order, the Department solicits comments to two questions in its discussion of Load Aggregators. The questions and responses follow.

1. Are the proposed registration requirements sufficient or should the Department require additional indicators of financial and managerial ability, or the posting of surety bonds, etc. If so, what should those requirements be?

Each Distribution Company should be permitted to propose reasonable security requirements in tariff provisions subject to the Department's review and approval. It is possible that such provisions would differ from company to company and it may not be possible to estimate such security needs at this time. The requirements would reflect costs which the Distribution Company might reasonably expect to incur on behalf of or due to customers with non-performing Suppliers. Those costs would depend on the supply and collection role the Distribution Company is ultimately required to play in the restructured environment when Suppliers fail to deliver and customers with non-performing Suppliers are asked to pay the higher costs of cover. In all cases, however, any Load Aggregator should be permitted to satisfy applicable security requirements based on the financial strength or resources available from the Supplier from whom such Load Aggregator arranges for the provision of Generation Service. Those Load Aggregators, particularly Municipal Load Aggregators, whose principal function is the provision of the "aggregation value added", should not be required to possess direct financial resources in amounts designed to assure reliability of supply. Such aggregators are not performing the supply function. They are aggregating customers for delivery to a Supplier.

2. What safeguards can be used to protect against "slamming" (transfer of a customer to another provider without authorization by or notification to the customer)?
- Qualification to make or arrange for retail sales in Massachusetts

could be subject to a "clean track record" on "slamming". While care may be required in order to avoid any undue burdens on interstate commerce and any due process problems, the Department should be able to penalize Suppliers found guilty of "slamming" by withdrawing the right of such Suppliers to participate in Massachusetts retail sales. "Slamming" should not, however, be so broadly defined as to include publicly advertised municipal votes, which would be a part of the municipal load aggregation process.

3. Additional General Comments

Lexington generally prefers to leave the many other questions posed by the Department for comment by those parties with particularized interests in the subject questions. In a similar vein, it is the particular interest in municipal load aggregation which led to the instant effort to draft the attached regulations regarding load aggregation and municipal load aggregation. However, two major issues of policy go beyond the topic of load aggregation and deserve brief comment.

Spot Market Pricing of Basic Service

The proposed spot market pricing of basic service increases the need for readily available load aggregation. Consequently, spot market basic service should result in greater Department attention on facilitating load aggregation. It appears that the Department's primary interest in suggesting that basic service be

based on the spot market is the assurance that a robust spot market quickly develop (Order, page 23). Restricting customer choice in the area of basic service is seen by the Department as a way of helping the embryonic spot market, a market which others may view as best left to natural development. The many small customers who can be expected to remain on basic service may not want the "benefits of competitive market prices" (Order, page 23) if represented by spot market pricing during the transition. Small customers disappointed by spot pricing will be in need of readily available load aggregation programs.

The Administrative Determination of Avoided Costs

The Proposed Rules allow for the administrative determination of the market value of utility generation assets. It is not, however, clear that the final determination of value for those plants which remain in utility possession at the end of the transition period will be made on an administrative basis. Clearly, some method of valuing such plants **at that time** will be needed. As a matter of prudence, each utility should be required to demonstrate that it has maximized plant values in order to minimize ratepayers' stranded cost obligations. **See:** Lexington Comments, April 12, 1996 at pages 8-11. At some point in time, administrative determinations should end and the final "true-up" should be based, not on regulatory guesses what the price of power over the remaining useful lifetime of the generator is, but on the

market's guess. The market's guess is a world different from a regulatory guess. It is based on a bidder's willingness to invest dollars in the quality of his guess. The singular mistake of the 1980's, the mistake that spawned today's many over-market non-utility generator contracts, was the administrative determination of market values (in 1980's terms, "Avoided Costs"). That mistake should not be repeated in the 1990's.

Respectfully submitted,

TOWN OF LEXINGTON

By its Attorney,

Edward L. Selgrade, Esq.

1050 Waltham Street
Lexington, Massachusetts 02173
(617) 861-2004
(617) 861-7075 (Fax)
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ELS/msw
Encl.

ATTACHMENT A

Proposed Additions to

220 CMR 11.00: PROPOSED RULES GOVERNING THE RESTRUCTURING OF THE
ELECTRIC INDUSTRY IN THE COMMONWEALTH OF
MASSACHUSETTS

1. Insert a new Section 220 CMR 11.08 as follows:

11.08: Load Aggregation by Suppliers

(1) Purpose and Scope.

(a) Purpose. The purpose of this Section is to facilitate the implementation of customer choice by customers of varying sizes, including smaller customers in each customer class, by establishing minimum terms and conditions for the aggregation of customer load by Suppliers pursuant to tariffs required to be filed by each Distribution Company.

(b) Scope. This Section applies to each Distribution Company and all Suppliers which desire, as Load Aggregators, to aggregate customers for the purpose of selling, or arranging for the sale of, electricity at retail.

(2) Specific Definitions.

Load Aggregator shall mean any Supplier, including, without limitation, any Municipal Load Aggregator as defined in Section 11.09, which acts on behalf of two or more customers by aggregating, with proper authorization, the load of such customers into a pool and obtaining Generating Service for such pool, whether such Load Aggregator operates as a purchaser at wholesale from another Supplier and a reseller at retail to such pool of aggregated customers or as a broker and agent only which does not purchase for resale but arranges for the retail purchase by the pool of aggregated customers from another Supplier.

Load Aggregation Agreement shall mean any agreement which a Distribution Company shall require any Load Aggregator to execute with such company which shall be in such form as may be approved by the Department as a part of the

tariff filed by such company in accordance with Section 11.08(4), below, or as otherwise approved by the Department as provided in such section.

(3) Load Aggregation.

(a) Any Load Aggregator may aggregate the load of customers of all classes and sizes of any Distribution Company into a single aggregated pool and shall be entitled to represent and to act on behalf of such aggregated customers in all respects with respect to such Distribution Company.

(b) Any Load Aggregator may operate as a purchaser at wholesale and a reseller at retail of Generation Service to each aggregated customer in its pool or may operate as a broker or agent only which shall arrange for the retail purchase of Generation Service by each such customer from another Supplier. A Load Aggregator shall describe fully and accurately its method of operation to each customer which becomes a member of its aggregated pool.

(c) Where appropriate under the circumstances, each Distribution Company shall treat all customers which become members of the aggregated pool of any Load Aggregator on an aggregated basis with respect to Distribution Service and Ancillary Services, if any, provided by such Distribution Company to such customers. Each Distribution Company shall describe the extent to which services shall be provided on an aggregated basis in the tariff filed by such company in accordance with Section 11.08(4), below.

(d) No customer which becomes a member of an aggregated pool of customers operated by any Load Aggregator shall be required as a result of such membership to obtain any special metering or other equipment not otherwise required by any customer exercising its individual right to choose any Supplier under these regulations. Except as the Department may approve as a part of the tariff filed by each Distribution Company in accordance with Section 11.08(4), below, each customer which is a member of an aggregated pool of customers of any Load Aggregator shall be entitled as such pool member to use and apply, or have such Load Aggregator use and apply on its behalf, any estimation, forecasting, imbalance trading or billing methodology or protocol applicable to any individual customer choosing any Supplier pursuant

to these regulations and such use and application shall be on an aggregated basis wherever appropriate.

(e) Each Load Aggregator may provide for, in accordance with the terms of its authorization from its aggregator customers, the addition of customers to, and deletion of customers from, its aggregated pool of customers from time to time; provided that all such changes in pool membership shall be subject to reasonable notice and other limitations set forth by each Distribution Company in the tariff filed by such company in accordance with Section 11.08(4).

(4) Load Aggregation Tariff Requirements.

(a) Each Distribution Company shall file for the review and approval of the Department load aggregation tariffs consistent with this Section 11.08 and the other provisions of 220 CMR 11.00. Such tariff shall include any form of Load Aggregation Agreement which such Distribution Company shall require any Load Aggregator to execute with such company. Such tariff, or Load Aggregation Agreement, shall include or specify such provisions of the company's tariffs with respect to security, billing, collections, bad debts, payment allocations, terminations and billing disputes and other relevant matters as may be applicable to individual customers of any aggregated pool in each customer's individual capacity and such provisions as may be applicable to such pool of customers on an aggregated basis.

(b) No Load Aggregation Agreement shall be effective unless the form thereof has been approved by the Department as a part of the tariff filed by the Distribution Company in accordance with this Section 11.08(4) or, in the event that any Load Aggregator requests revisions or modifications to any such form, unless any such revisions or modifications have been agreed to by such company and have been subject to Department review for thirty (30) days after the filing thereof with the Department and no order has been issued by the Department during such period disapproving such revisions or modifications.

2. Insert a new Section 220 CMR 11.09 as follows:

11.09: Municipal Load Aggregation

(1) Purpose and Scope.

(a) Purpose. The purpose of this Section is to facilitate the exercise of municipal choice by a municipality which chooses to act on behalf of its residents as a Load Aggregator in accordance with the provisions of Sections 34 through 69 of Chapter 164 of the General Law, as applied by the Department in this Section 11.09, or in accordance with any other lawful authorization which may be enacted by the General Court with respect to the aggregation of customers by municipal entities or governments for the purpose of supplying or arranging for the supply of Generation Service, and any other energy or public service, to such aggregated customers.

(b) Scope. This Section applies to each Distribution Company and all Municipal Load Aggregators as defined hereinafter.

(2) Specific Definitions.

Municipal Load Aggregator shall mean any municipal electric plant or other municipal entity or government which acts as a Load Aggregator on behalf of two or more of the residents of such municipality in accordance with the applicable provisions of Chapter 164 of the General Laws or any other lawful authorization which may be enacted by the General Court with respect to the aggregation of customers by municipal entities or governments for the purpose of supplying or arranging for the supply of Generation Service, and any other energy or public service, to such aggregated customers.

(3) Rights and Responsibilities of Municipal Load Aggregators. Except as set forth otherwise in this Section 11.09(3) or as the Department may order in any tariff filed by a Distribution Company pursuant to Section 11.08(4), Municipal Load Aggregators shall have all rights and responsibilities of Load Aggregators which are not Municipal Load Aggregators; provided, however, that any such responsibility which is inconsistent with the rights or duties of municipal light plants established pursuant to Chapter 164 shall not apply to

any Municipal Load Aggregator which is so established unless specifically provided to the contrary by the Department.

(3) Municipal Load Aggregation by Municipal Light Plants Established Pursuant to Chapter 164.

(a) Any municipal light plant established by a municipality in accordance with Sections 34 through 69 of Chapter 164 of the General Laws may operate as a Municipal Load Aggregator within the meaning of this Section 11.09. As a Load Aggregator, any Municipal Load Aggregator shall be entitled to represent and act on behalf of its aggregated pool of customers in arranging for the delivery of Generation Service over the facilities of the Distribution Company in the service territory of which such Municipal Load Aggregator operates.

(b) Any municipal light plant established by a municipality in accordance with Sections 34 through 69 of Chapter 164 of the General Laws solely for the purpose of operating as a Municipal Load Aggregator within the meaning of this Section 11.09 shall not be obligated to acquire, or to engage in any negotiations for the purpose of acquiring, or to participate in any proceedings before the Department for the purpose of valuing, any part of the plant, property or other equipment of any Distribution Company in the service territory of which such Municipal Load Aggregator operates. Such municipal light plant and such Distribution Company may engage in such negotiations, and enter into such purchase and sale or other agreements, relating to any such plant, property or equipment of such Distribution Company as each in its sole discretion may determine. Nothing herein shall restrict or require the acquisition by such municipal light plant of any other plant, property or equipment or of any rights therein.

(c) Any municipal light plant established by a municipality in accordance with Sections 34 through 69 of Chapter 164 of the General Laws solely for the purpose of operating as a Municipal Load Aggregator within the meaning of this Section 11.09 shall operate as a municipal light plant subject to all rights and responsibilities as such set forth in Chapter 164; provided that

(i) as a Municipal Load Aggregator, such municipal light plant may operate either as a purchaser at wholesale and a reseller at retail or as a broker and agent for its aggregated pool of customers;

(ii) such municipal light plant may choose by local vote establishing such plant to serve only such residents of such municipality which elect to be served as a Municipal Load Aggregator by such light plant and shall be free of any obligation to serve any such resident which elects to be served by any other Supplier;

(iii) any such municipal light plant, choosing by local vote to serve only such residents of such municipality which elect to be served by such light plant, may provide that residents electing not to be so served shall exercise such election by a written option not to be served and all other residents shall be deemed to have authorized service by such light plant by passage of the local votes in connection with the establishment of such light plant; after initial election or authorization, any resident shall be entitled to change its decision in writing, subject to reasonable notice provisions as may be adopted by such municipal light plant consistent with any applicable notice requirements in tariffs filed by the Distribution Company pursuant to Section 11.08(4);

(iv) any such municipal light plant may charge or impose on any Supplier, with which such light plant contracts on behalf of its aggregated pool of customers for the provision of Generation Service, an aggregation fee or payment for the purpose of compensating such municipal light plant for the value of the aggregation service effected by such light plant; and

(v) any such light plant may satisfy the requirements of financial soundness or any other security or financial requirements imposed on any Load Aggregator pursuant to 220 CMR 11.00 by reference to any such Supplier with which such light plant contracts for the

provision of Generation Service for its pool
of aggregated customers.